

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA, ) CR 17-00109 LEK  
4 )  
5 Plaintiff, ) Honolulu, Hawaii  
6 vs. ) October 25, 2017  
7 ) STATUS CONFERENCE  
8 MICHAEL PHILLIP PATRAKIS, )  
9 )  
10 Defendant. )  
11 \_\_\_\_\_ )

12  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE THE HONORABLE LESLIE E. KOBAYASHI  
15 UNITED STATES DISTRICT JUDGE  
16

17 APPEARANCES:

18 For the Government: JILL OTAKE, AUSA  
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1 WEDNESDAY, OCTOBER 25, 2017 9:59 A.M.

2 THE COURTROOM MANAGER: Criminal 17-00109 LEK,  
3 United States of America versus Defendant 1, Michael Phillip  
4 Patrakis.

5 This case has been called for a status conference.

6 Counsel, please make your appearances for the record.  
7 Please speak into a microphone.

8 MS. OTAKE: Good morning, Your Honor.

9 Your Honor, Jill Otake and Darren Ching for the United  
10 States

11 THE COURT: Good morning to you both.

12 MR. SHIGETOMI: Good morning, Your Honor.

13 Keith Shigetomi for Michael Patrakis.

14 THE COURT: Good morning, Mr. Shigetomi.

15 So I thought we'd have this status conference. I received  
16 your submission, and given what the government has said, maybe  
17 I was premature in saying then maybe we don't need an  
18 evidentiary hearing.

19 What are your thoughts?

20 MR. SHIGETOMI: Your Honor, I think there are  
21 certain issues that are factual determinations that we need to  
22 have some -- at least some evidence.

23 THE COURT: Okay.

24 MR. SHIGETOMI: So, yeah. And I guess I was kind of  
25 confused as to how to proceed because there wasn't anything in

1 terms of -- it wasn't entitled a motion.

2 THE COURT: Right.

3 MR. SHIGETOMI: It wasn't any hearing date, so --

4 THE COURT: Yeah. Okay. So -- so -- so help me  
5 understand. So what issues do you think -- in particular, what  
6 witnesses do you think? 'Cause what I hear from the  
7 government -- and I may have misunderstood -- is they're  
8 saying, "Hey, it's pretty clear it's not anything that, you  
9 know, witness testimony can shed any light, so we don't intend  
10 to call anybody. So you probably then should just have a oral  
11 argument and rule on the papers."

12 But you're saying that particular witnesses need to come  
13 forward to shed light on certain issues?

14 MR. SHIGETOMI: Well, there are a number of search  
15 warrants, so, obviously, the search warrants, we haven't  
16 challenged the actual search warrants in terms of sufficiency.

17 THE COURT: Okay.

18 MR. SHIGETOMI: But there are observations made  
19 during a warrantless search, an entry, and there was some  
20 evidence recovered. And so what we're -- our position is --  
21 well, it's twofold. One is that there did not exist exigent  
22 circumstances for the initial entry.

23 THE COURT: Okay.

24 MR. SHIGETOMI: Secondly, that the -- the person who  
25 provided information to the -- in this case the Hawaii County

1 Police Department, illegally obtained information and provided  
2 it to them.

3 And then there's a third in which before the search  
4 warrants are actually issued and executed, the cooperating  
5 witness, so to speak, did, at the request of the Hawaii County  
6 Police Department, utilize their computers to provide  
7 information to them in -- that also led to the issuance of the  
8 search warrants.

9 So those are the issues that we see that require some  
10 witnesses.

11 THE COURT: Okay. Thank you very much.

12 I'll hear from Ms. Otake.

13 MS. OTAKE: Thank you, Your Honor.

14 Your Honor, I'll attempt to address each in turn.

15 (Microphone feedback.)

16 THE COURTROOM MANAGER: Wait. Hold on. I'm sorry.

17 MS. OTAKE: The -- it's important to note that he  
18 doesn't challenge --

19 THE COURT: Sorry.

20 MS. OTAKE: That's okay -- counsel doesn't challenge  
21 the sufficiency of the warrants, and what he does challenge is  
22 the -- what he says is the evidence recovered during the  
23 warrantless entry. But in fact, there was nothing seized  
24 during the warrantless entry, and ultimately the question of  
25 whether or not there were exigent circumstances warranting the

1 warrantless entry is really of no matter because Your Honor can  
2 excise from the affidavit any of the observations made when the  
3 officers went in to rescue the children. You can excise those  
4 observations from the affidavit and you still have ample  
5 probable cause without that.

6 So really, there's no need to call any witnesses to  
7 testify about what the exigency was to enter the home. And  
8 even --

9 THE COURTROOM MANAGER: I'm sorry, counsel. We're  
10 having trouble with our lectern.

11 MS. OTAKE: Okay. I can stand there.

12 THE COURTROOM MANAGER: Yeah, I think may be better  
13 there. I'm sorry.

14 MS. OTAKE: No problem.

15 And alternatively, the exigent circumstances are outlined  
16 in the affidavit anyway. The exigency in the affidavit  
17 specifically talks about the need to remove these children from  
18 this residence.

19 Secondly, Your Honor, he talks about the allegations that  
20 this woman, who's Jessie Rutowski, illegally obtained  
21 information and provided that to the government. That's  
22 covered in our brief. We addressed the fact that there's an  
23 apparent authority doctrine. It's clear from the affidavit  
24 that the officers believed what she told them, that she had the  
25 authority to obtain this information from the Dropcam account.

1 And again, so there's no need for testimony on that particular  
2 topic.

3       Regarding the third issue of her giving access to the  
4 accounts while at the police station, again, that's another  
5 apparent authority situation where she has told them that she  
6 was given the ability to access these accounts from the police  
7 station, and by that time at least one of the warrants had  
8 already been written and signed off on.

9       So ultimately there's nothing that any of the witnesses  
10 would testify to that really sheds any light on anything.  
11 We're relying on the four corners of the affidavit.

12       If Your Honor is inclined to examine the exigency of the  
13 warrantless entry, then we would possibly reconsider and  
14 possibly call two of the officers for that, but I don't think  
15 you need to reach the exigency question because, as I said, all  
16 you have to do is redact the -- or remove from the affidavit in  
17 your consideration what those observations were because they  
18 were, frankly, rather minor in the grand scheme of probable  
19 cause.

20               THE COURT: Okay. So I understand your argument  
21 with regard to the exigency. I'm inclined to agree with you on  
22 that.

23       But with regard to the apparent authority, really doesn't  
24 it rest upon whether they were reasonable in -- and credible in  
25 making that determination or believing her? So wouldn't that

1   necessitate them coming to court and saying -- being  
2   cross-examined, "Why did you believe her?" or, "Why wouldn't  
3   they show you?"

4           Wouldn't a reasonable police officer have to have enough  
5   rather than somebody saying, "Hey, you know, I have authority  
6   to go into somebody else's," you know, "computer and do this,  
7   that, and the other thing," and they can't just say, "Great,"  
8   you know, and not have to do -- or have a little bit more  
9   information that makes it credible or reasonable that that  
10   person would have apparent authority?

11           MS. OTAKE: I guess my answer to that is twofold,  
12   Your Honor. First, the defense has already said he's not  
13   challenging the sufficiency of the search warrant affidavit  
14   itself, which to me outlines within it several factors as to  
15   why they considered her information reasonable. The fact that  
16   she had the information in the first place makes sense. The  
17   circumstances under which she obtained them are not facts that  
18   somebody could make up -- they're -- it's an unusual  
19   circumstance. And I think if he were to challenge the  
20   affidavit itself by saying that the affidavit is deficient  
21   because the affidavit doesn't outline the credibility of the  
22   informant, for lack of a better word, then that would be a  
23   different scenario. But because he doesn't do that, we can  
24   rely on the four corners of the affidavit.

25           THE COURT: Okay. All right.

1           Mr. Shigetomi, what would you like to do? I mean, you  
2   know, with regard to this issue, like I said, I'm inclined on  
3   the exigency to, you know, side I think with the government  
4   because I think Ms. Otake sort of goes through the reasons that  
5   I can actually ignore those portions of the affidavit and still  
6   there's enough to go forward.

7           I'm sort of on the fence with this idea with regard to the  
8   apparent authority, although she points out you're not really  
9   challenging the issuance of the search warrant; you're saying  
10   that information was obtained prematurely from -- and  
11   impermissibly.

12          So with regard to that, how do you want to proceed? Do  
13   you want to file something and then have me rule on that? I  
14   know time is getting short with regard to the hearing.

15                 MR. SHIGETOMI: Your Honor, if the Court would  
16   allow, I would file something. But -- yeah, that's fine.

17                 THE COURT: Okay. And then I'll just rule right  
18   away so that we can -- Warren, what's the hearing again on the  
19   suppression?

20                 THE COURTROOM MANAGER: November 1.

21                 THE COURT: Yeah, so that's really coming up. So --

22                 THE COURTROOM MANAGER: That's next week.

23                 THE COURT: -- what do you guys want to do in terms  
24   of -- today's the 25th, so I want to give them an opportunity  
25   to respond.



1                   MR. SHIGETOMI: Your Honor, I have spoken to  
2 Mr. Patrakis, and in light of what has occurred, he is willing  
3 to move the hearing so that we can have more time to address  
4 those issues.

5                   THE COURT: Okay.

6                   MS. OTAKE: And, Your Honor, we're not in a position  
7 where we'd be inclined to move the hearing, in part because  
8 we've been in situations where hearing gets delayed and then  
9 the time frame for negotiating a case gets truncated.

10                  THE COURT: Right.

11                  MS. OTAKE: So our preference would be to keep the  
12 hearing date.

13                  I would also note, you know, that the government is not  
14 objecting if the defense wants to put on their own witnesses.  
15 That's fine. But just for -- just to make it clear, we don't  
16 intend to call any witnesses.

17                  THE COURT: Right. But, so, Mr. Shigetomi, were you  
18 intending to call any witnesses? I neglected to ask you that.

19                  MR. SHIGETOMI: Uhm, well, in light of what the  
20 Court -- some of the Court's rulings, I would have to call at  
21 least my client.

22                  THE COURT: Uh-huh. Okay. So that would depend on  
23 how the court rules --

24                  MR. SHIGETOMI: Yes.

25                  THE COURT: -- with regard to if I'm going to

1     require them to bring the officer, say, with regard to the  
2     informant.

3                 MR. SHIGETOMI:   Yes.

4                 THE COURT:   Okay.   So I'm trying to think of enough  
5     time for you guys to do that and me to rule, and then we can  
6     figure out -- I'm not opposed to moving the hearing, but by  
7     like a couple days, not like, you know, weeks.   I don't know  
8     what people's availability is.

9                 MS. OTAKE:   If it's moved a week, Your Honor, that's  
10    fine.

11                THE COURT:   Okay.   So I was just thinking giving you  
12    guys enough time to brief it and then otherwise literally it's  
13    like tomorrow and then the next day or something, and I think  
14    that's not conducive.

15                So, Warren, what's our availability a week later?   So the  
16    1st?   So like the 8th?   7th, 8th, 9th?   What's our availability  
17    with regard to that?

18                MR. SHIGETOMI:   Your Honor, I was just --

19                THE COURT:   Yeah.

20                MR. SHIGETOMI:   -- confirmed for trial that week.

21                THE COURT:   Okay.

22                MR. SHIGETOMI:   So if it could be just on the  
23    following week, I should be available the week of the 13th.

24                MS. OTAKE:   That's fine, Your Honor.

25                THE COURT:   Okay.   How about early in the week,

1 Warren? How are we doing?

2 THE COURTROOM MANAGER: 14th is a SAT luncheon.  
3 15th.

4 THE COURT: We can still do it on the 14th. That's  
5 just going to be probably -- oh, no, in the morning.

6 THE COURTROOM MANAGER: 15th?

7 THE COURT: What about the afternoon of the 14th?  
8 What are you guys available? 14th? 15th? What's good for you  
9 folks?

10 MR. SHIGETOMI: If it's the afternoon of the 14th,  
11 I'm available. 15th I'm available.

12 MS. OTAKE: Your Honor, the afternoon's fine if it's  
13 any time 2 o'clock or later.

14 THE COURTROOM MANAGER: 14th?

15 MS. OTAKE: Of the 14th.

16 THE COURTROOM MANAGER: 14th at 2:00.

17 MS. OTAKE: And --

18 THE COURTROOM MANAGER: I'm sorry, Your Honor. That  
19 luncheon with the Supreme Court? I don't know how long.

20 THE COURT: Right. I've got actually two luncheons  
21 that day. I don't know if I'm going to go to the Supreme Court  
22 one or the one with the Sex Abuse Treatment Center.

23 So can we do it 2:30? Is that too late for you guys? If  
24 you have to bring witnesses, you have to bring them from the  
25 Big Island.

1 MS. OTAKE: Right. So we would prefer the 15th in  
2 that case, Your Honor.

3 THE COURT: Uh-huh. What time do we have in the  
4 morning of the 15th? Can we do 9:00? 9:30? Is that --

5 THE COURTROOM MANAGER: Yes. There's a afternoon  
6 3:50 Audrey CEO consultation.

7 THE COURT: Oh, okay. So we could do it in the  
8 morning, right?

9 THE COURTROOM MANAGER: Right.

10 THE COURT: 9:00? 9:30? What do you guys prefer?

11 MS. OTAKE: 9 o'clock, Your Honor.

12 MR. SHIGETOMI: That's fine, Your Honor.

13 THE COURTROOM MANAGER: November 15th, 9:00.

14 MS. OTAKE: Your Honor, just so we're clear, I want  
15 to make sure we're addressing the specific issue only of why  
16 witnesses would be necessary to -- to address the issue of the  
17 apparent authority.

18 THE COURT: Right. Well, I guess both issues that  
19 he raised. But I'm was just saying hearing from you folks, my  
20 inclination is I think you're persuasive with regard to the  
21 exigent circumstances. I'll leave that to Mr. Shigetomi if he  
22 wants to brief that and say, "No, actually this is why you  
23 should. Even if you ignore those portions of the affidavit,  
24 this is still relevant and necessary because XYZ."

25 And then with regard to the apparent authority, I think

1     that really -- that is an issue and I would appreciate briefing  
2     on that.

3             So Mr. Shigetomi will brief why he thinks witnesses are  
4     needed, and then I'll give you an opportunity to file an  
5     opposition to that.

6             MS. OTAKE:   Okay.   Thank you.

7             THE COURT:   One week, Mr. Shigetomi?   Is that  
8     sufficient?   So that would take it to the 1st?

9             MR. SHIGETOMI:   That's fine, Your Honor.

10            THE COURT:   Okay.   And, Ms. Otake and Mr. Ching, how  
11     much time do you want for your opposition memo?

12            MS. OTAKE:   November 8th, Your Honor, if possible.

13            THE COURT:   Okay.   All right.   And then I'll rule  
14     thereafter and we have the new date for the hearing.   Okay.  
15     Good.

16            Is there anything else that we need to address with regard  
17     to the case or the hearing, Mr. Shigetomi?

18            MR. SHIGETOMI:   No, Your Honor.

19            THE COURT:   Ms. Otake?

20            MS. OTAKE:   No.   Thank you, Your Honor.

21            THE COURT:   Thank you very much.   We're in recess.

22            MR. SHIGETOMI:   Thank you, Your Honor.

23            (Proceedings concluded at 10:13 A.M.)

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COURT REPORTER'S CERTIFICATE

I, DEBRA READ, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, December 31, 2018.

/s/ Debra Read  
DEBRA READ, CSR CRR RMR RDR